

REMARKS

This is a full and timely response to the outstanding non-final Office Action mailed June 11, 2009. Through this response, claims 5, 21, 22, 30, 43, and 44 have been amended. Reconsideration and allowance of the application and pending claims 1-5, 7-41, 43-48, and 53-58 are respectfully requested.

I. Claim Rejections - 35 U.S.C. § 102(e)

A. Statement of the Rejection

Claims 1-3, 5, 7-12, 14-17, 20-24, 26-28, 30-37, 39-41, 43-48, 53-56, and 58 have been rejected under 35 U.S.C. § 102(b) as allegedly being anticipated by *Bruck* (U.S. Patent No. 6,008,836). Applicants respectfully traverse this rejection for the reasons set forth below.

B. Discussion of the Rejection

It is axiomatic that “[a]nticipation requires the disclosure in a single prior art reference of each element of the claim under consideration.” *W. L. Gore & Associates, Inc. v. Garlock, Inc.*, 721 F.2d 1540, 1554, 220 USPQ 303, 313 (Fed. Cir. 1983). Therefore, every claimed feature of the claimed invention must be represented in the applied reference to constitute a proper rejection under 35 U.S.C. § 102(b).

In the present case, not every feature of the claims is represented in the *Bruck* reference.

Independent Claim 1

Claim 1 recites (with emphasis added):

1. A method for determining the characteristics of a display device coupled to a network client device capable of receiving television (TV) signals, the network client device having video and audio output capabilities, said method comprising the steps of:

driving a display device with a first video output signal formatted according to a first video interface specification;

responsive to driving the display device, explicitly querying a user, the query configured to solicit a response from the user that corresponds to whether the user can presently observe information rendered on the display device, the information included in the first video output signal;

determining a characteristic of the display device responsive to determining that the user can presently observe the information, the determination based on user input corresponding to the solicited response;

driving the display device with a second video output signal and repeating the explicit query to the user responsive to determining that the user cannot presently observe the information.

Applicants respectfully submit that independent claim 1 is allowable over *Bruck* for at least the reason that *Bruck* fails to disclose, teach, or suggest at least the above emphasized claim features. For instance, the non-Office Action (page 2) equates the ***first video output signal*** with “some mid-range level of Brightness” and refers to Fig. 6B of *Bruck*. However, Applicants respectfully disagree. The menu of Figure 6B in *Bruck* is described in col. 3, lines 45-47 (emphasis added) as illustrating “the Brightness Control screen of the WebTV™ web browser program,” which suggests that graphics, not video, drives the display. In other words, the screen of Figure 6B in *Bruck* appears to show a web-page, with no evidence in the supporting specification, or in the figure, of video. Further, *Bruck* appears to be concerned with a “method of adjusting the picture quality of web page images displayed on a display device” (col. 1, lines 15-16, *Bruck*), and addresses a need of “providing the user a convenient way to tune the display characteristics of his display monitor to optimize the display for all web pages displayed on the monitor” (col. 2, lines 54-

57, *Bruck*). A web page is not a **first video output signal**. That is, the display of the web page is not driven by a signal comprising video, but rather, appears in *Bruck* to be driven by graphics.

With regard to the alleged mid-range level of brightness, the “brightness” appears to be adjusted by controls on the television (see, col. 8, line 34, *Bruck*), and hence does not constitute a video output signal. That is, there is no evidence to support this allegation that a “mid-range level of brightness” comprises video, and in fact, it is more reasonable to assume that the adjustment is handled via a mere control signal. A control signal is not video. Indeed, there is no evidence that any video is involved in the screens of the web browser program. Since the query is **responsive to driving the display device** with a **video output signal**, and a web page or a control signal is not video, Applicants respectfully submit that claim 1 is allowable over *Bruck* and hence respectfully request that the rejection be withdrawn.

Further, the claimed features of **driving the display device with a second video output signal and repeating the explicit query to the user responsive to determining that the user cannot presently observe the information** are also not met by *Bruck*. For instance, the non-final Office Action (page 3) equates the **second video output signal** with “an adjusted brightness setting video output signal, Fig. 6B.” However, there is no evidence in the specification or Figures of *Bruck* to support a “second video output signal.” Indeed, as explained above, control appears to be internal to the television, and there is no evidence that such control is via a video output signal, especially since a web-page is displayed in Figure 6B of *Bruck*.

Because independent claim 1 is allowable over *Bruck*, dependent claims 2-3, 5, 7-12, 14-17, 20-24, and 53 are allowable as a matter of law for at least the reason that the dependent claims 5, 7-12, 14-17, 20-24, and 53 contain all elements of their respective base claim. See, e.g., *In re Fine*, 837 F.2d 1071 (Fed. Cir. 1988).

In addition, Applicants respectfully submit that one or more dependent claims are allowable on separate grounds. For instance, with regard to claim 2, the non-final Office Action (page 3)

alleges that Figure 6B shows “wherein the characteristic includes at least one of a **type of display device, picture size, frame rate, scan format, color format, colorimetry, picture width-to-height aspect ratio, width-to-height aspect ratio of pixels, and capability and manner of receiving ancillary data.**” Applicants respectfully disagree. None of these claimed features are shown in figure 6B of *Bruck*. For at least this additional reason, Applicants respectfully request that the rejection be withdrawn.

As another example, reference is made to claim 7, which provides “wherein the transmitted video output signal is delivered through a video port in the network client device, the **video port preset according to** the first video interface specification and according to **at least one parameter of the TV signal.**” The non-final Office Action (page 4) neglects to address this feature, and hence a prima facie rejection has not been established based on omission of a necessary feature. Further, claim 7 is allowable for at least the reason that there is no disclosure of the video port of *Bruck* being preset according to a parameter of a received TV signal. For at least this additional reason, Applicants respectfully request that the rejection be withdrawn.

As another example, reference is made to claim 11, which provides “wherein the step of driving the display device with the second video output signal further includes the step of **driving the display device according to a second video format different than a first video format** of the first video output signal, wherein the step of driving the display device according to the second video format is a result of an **automatic cycling** to the second video output signal **either after a defined threshold period of time of receiving no user input and or as a result of the user input.**” The non-final Office Action (page 5) refers to Figure 6B once again, and the alleged “different brightness level” for the former emphasized features and element 94 of Figure 6B for the latter emphasized features. As to the former, as expressed in association with claim 1, there simply is no evidence of a second video output signal, nor is there any

evidence that the brightness level comprises video. Further, even assuming *arguendo* brightness level could be construed as a video signal, there a difference in brightness does not constitute a difference in format. Also, there is no teaching or disclosure of ***automatic cycling*** in *Bruck*, but rather, control adjustment all appears to be user-initiated. For at least these reasons, Applicants respectfully request that the rejection be withdrawn.

With regard to claim 19, as another example, the non-final Office Action (page 6) alleges that *Bruck* discloses the features of claim 18 from which claim 19 depends. However, this allegation is contrary to the admission of the Office as made on page 11 of the non-final Office Action. In other words, should claim 19 be rejected again, it could only be rejected under 103, not 102. Applicants need not address the merits at this point, but only point out this deficiency of the rejection and request that the next Office Action, if the rejection is maintained, be established under a different grounds of rejection not necessitated by amendment (i.e., the next rejection, if any, needs to be non-final). For at least these reasons, Applicants respectfully request that the rejection be withdrawn.

With regard to claim 23, as another example, even assuming *arguendo* the veracity of the alleged truism (see, non-final Office Action, page 8), Applicants note that it is not inherent to determine how a user has configured the display to display a TV signal of a defined aspect ratio. Further, since *Bruck* does not disclose this feature, Applicants respectfully request that the rejection be withdrawn on this separate ground.

With regard to claim 53, as another example, the non-final Office Action (page 9) alleges a mapping is evidenced by the disclosure in col. 5, lines 18-21 of *Bruck* of S-video, composite and the alleged parameter is evidenced by “video encoding/converting” as allegedly disclosed in column 5, lines 50-52. Applicants respectfully disagree. There is nothing in these recited sections of a mapping as defined by Applicants’ specification based on a parameter of a video

output signal. For at least this additional reason, Applicants respectfully request that the rejection be withdrawn.

Independent Claim 26

Claim 26 recites (with emphasis added):

26. A system for determining the characteristics of a display device, said system comprising:
a memory with logic; and
a processor configured with the logic to ***drive a display device with a first video output signal formatted according to a first video interface specification***, wherein the processor is further configured with the logic to, ***responsive to driving the display device, query a user***, the query configured to solicit a response from the user that corresponds to whether the user can presently observe an object rendered on the display device, the object included in the first video output signal, wherein the processor is further configured with the logic to determine a characteristic of the display device responsive to determining that the user can presently observe the object, the determination based on user input corresponding to the solicited response, ***wherein the processor is further configured with the logic to effect driving the display device with a second video output signal and repeating the query to the user responsive to determining that the user cannot presently observe the object.***

Applicants respectfully submit that independent claim 26 is allowable over *Bruck* for at least the reason that *Bruck* fails to disclose, teach, or suggest at least the above emphasized claim features. For instance, the non-Office Action (page 2) equates the ***first video output signal*** with “some mid-range level of Brightness” and refers to Fig. 6B of *Bruck*. However, Applicants respectfully disagree. The menu of Figure 6B in *Bruck* is described in col. 3, lines 45-47 (emphasis added) as illustrating “the Brightness Control screen of the WebTV™ web browser program,” which suggests that graphics, not video, drives the display. In other words, the screen of Figure 6B in *Bruck* appears to show a web-page, with no evidence in the supporting specification, or in the figure, of video. Further, *Bruck* appears to be concerned with a “method of adjusting the picture quality of web page images displayed on a display device” (col. 1, lines 15-16, *Bruck*), and addresses a need of “providing the user a convenient way to tune the display characteristics of his

display monitor to optimize the display for all web pages displayed on the monitor” (col. 2, lines 54-57, *Bruck*). A web page is not a **first video output signal**. That is, the display of the web page is not driven by a signal comprising video, but rather, appears in *Bruck* to be driven by graphics.

With regard to the alleged mid-range level of brightness, the “brightness” appears to be adjusted by controls on the television (see, col. 8, line 34, *Bruck*), and hence does not constitute a video output signal. That is, there is no evidence to support this allegation that a “mid-range level of brightness” comprises video, and in fact, it is more reasonable to assume that the adjustment is handled via a mere control signal. A control signal is not video. Indeed, there is no evidence that any video is involved in the screens of the web browser program. Since the query is **responsive to driving the display device** with a **video output signal**, and a web page or a control signal is not video, Applicants respectfully submit that claim 26 is allowable over *Bruck* and hence respectfully request that the rejection be withdrawn.

Further, the claimed features of **driving the display device with a second video output signal and repeating the query to the user responsive to determining that the user cannot presently observe the object** are also not met by *Bruck*. For instance, the non-final Office Action (page 3) equates the **second video output signal** with “an adjusted brightness setting video output signal, Fig. 6B.” However, there is no evidence in the specification or Figures of *Bruck* to support a “second video output signal.” Indeed, as explained above, control appears to be internal to the television, and there is no evidence that such control is via a video output signal, especially since a web-page is displayed in Figure 6B of *Bruck*.

Because independent claim 26 is allowable over *Bruck*, dependent claims 27-28, 30-37, 39-41, 43-48, and 54 are allowable as a matter of law.

In addition, Applicants respectfully submit that one or more dependent claims are allowable on separate grounds. For instance, with regard to claim 27, the non-final Office Action (page 3) alleges that Figure 6B shows “wherein the characteristic includes at least one of a **type of display device, picture size, frame rate, scan format, color format, colorimetry, picture**

width-to-height aspect ratio, width-to-height aspect ratio of pixels, and capability and manner of receiving ancillary data.” Applicants respectfully disagree. None of these claimed features are shown in figure 6B of *Bruck*. For at least this additional reason, Applicants respectfully request that the rejection be withdrawn.

As another example, reference is made to claims 31 and 32, the rejection omits an essential feature (e.g., **at least one parameter of the TV signal**) necessary for a prima facie rejection. For at least this additional reason, Applicants respectfully request that the rejection be withdrawn to claims 31 and 32.

As another example, reference is made to claim 36, which provides “wherein the processor is further configured with the logic to effect **driving** the display device with the second video output signal **according to a second video format, the second video format different than a first video format** of the first video output signal, the driving of the display device according to the second video output signal a result of an **automatic cycling** to the second video output signal from the first video output signal **after a defined threshold period of time of receiving no user input or as a result of the user input.”** The non-final Office Action (page 5) refers to Figure 6B once again, and the alleged “different brightness level” for the former emphasized features and element 94 of Figure 6B for the latter emphasized features. As to the former, as expressed in association with claim 26, there simply is no evidence of a second video output signal, nor is there any evidence that the brightness level comprises video. Further, even assuming *arguendo* brightness level could be construed as a video signal, there a difference in brightness does not constitute a difference in format. Also, there is no teaching or disclosure of **automatic cycling** in *Bruck*, but rather, control adjustment all appears to be user-initiated. For at least these additional reasons, Applicants respectfully request that the rejection be withdrawn.

With regard to claim 41, as another example, *Bruck* fails to disclose, teach, or suggest “further including a remote control device configured with a button that, responsive to activation of the button, cooperates with the logic to ***cycle through at least one of a plurality of formats and a plurality of video ports***. The non-final Office Action references Figures 1B and 10A, yet none of these figures or corresponding specification describes a cycling of different formats and certainly not plural video ports. As explained above, a difference in brightness is not a difference in format, and the brightness adjustment is internal to the television in *Bruck*, and hence would not emanate from the video link of *Bruck*. For at least these additional reasons, Applicants respectfully request that the rejection be withdrawn.

With regard to claim 46, as another example, even assuming *arguendo* the veracity of the alleged truism (see, non-final Office Action, page 8), Applicants note that it is not inherent to determine how a user has configured the display to display a TV signal of a defined aspect ratio. Further, since *Bruck* does not disclose this feature, Applicants respectfully request that the rejection be withdrawn on this separate ground.

With regard to claim 54, as another example, the non-final Office Action (page 9) alleges a mapping is evidenced by the disclosure in col. 5, lines 18-21 of *Bruck* of S-video, composite and the alleged parameter is evidenced by “video encoding/converting” as allegedly disclosed in column 5, lines 50-52. Applicants respectfully disagree. There is nothing in these recited sections of a mapping as defined by Applicants’ specification based on a parameter of a video output signal. For at least this additional reason, Applicants respectfully request that the rejection be withdrawn.

Independent Claim 55

Claim 55 recites (with emphasis added):

55. A method, comprising:

outputting a first television signal to a display device, the first television signal comprising one or more pictures, wherein at least one picture has a parameter configured with a first value;

outputting a second television signal to the display device, the second television signal comprising one or more pictures, at least one picture having the parameter configured with a second value, the difference in parameter values resulting in a difference in visual appearance of the at least one picture corresponding to each of the first and second television signals; and

soliciting one or more user inputs from a user, the solicitation intended to determine a user preference for the at least one picture corresponding to the first television signal or the second television signal; and

determining a display device characteristic based on the solicited user inputs.

Applicants respectfully submit that independent claim 55 is allowable over *Bruck* for at least the reason that *Bruck* fails to disclose, teach, or suggest at least the above emphasized claim features. For instance, the non-final Office Action (page 9) equates the different television signals with different brightness adjustments. However, there is no evidence in the specification or figures of *Bruck* to support a “second television signal.” Indeed, as explained above, control appears to be internal to the television, and a control signal (more reasonably likely to be the internal mechanism for adjustment of brightness of a web-page), is not a television signal comprising pictures. For at least this reason, Applicants respectfully request that the rejection be withdrawn.

Because independent claim 55 is allowable over *Bruck*, dependent claims 56 and 58 are allowable as a matter of law.

In addition, Applicants respectfully submit that at least claim 58 is allowable on separate grounds. The non-final Office Action (page 10) alleges that the display device characteristic is stored in memory (Figure 1C, item 55). Applicants note that there is no item 55 in Figure 1C, and

further note that *Bruck* does not teach saving any of the characteristics in memory. For at least this additional reason, Applicants respectfully request that the rejection be withdrawn.

II. Claim Rejections - 35 U.S.C. § 103(a)

A. Statement of the Rejection

1. Claims 4 and 29 have been rejected under 35 U.S.C. 103(a) as allegedly unpatentable over *Bruck* in view of *Krane* (U.S. Patent No. 5,799,063).

2. Claims 13, 18, and 38 have been rejected under 35 U.S.C. 103(a) as allegedly unpatentable over *Bruck* in view of *Elswick et al.* ("Elswick," U.S. Patent No. 6,791,620) and further in view of *May* (U.S. Patent No. 5,544,354).

3. Claim 57 has been rejected under 35 U.S.C. 103(a) as allegedly unpatentable over *Bruck* in view of *Elswick*.

4. Claim 25 has been rejected under 35 U.S.C. 103(a) as allegedly unpatentable over ATI Multimedia Center 7, 9, User's Guide, Copyright (c) 2002, ATI Technologies Inc. ("*ATI*," in view of *Rzeszewski et al.* ("Rzeszewski," U.S. Pat. No. 5,512,958).

Applicants respectfully traverse these rejections.

B. Discussion of the Rejection

The U.S. Patent and Trademark Office ("USPTO") has the burden under section 103 to establish a *prima facie* case of obviousness according to the factual inquiries expressed in *Graham v. John Deere Co.*, 383 U.S. 1, 148 USPQ 459 (1966). The four factual inquiries, also expressed in MPEP 2100-116, are as follows:

- (A) Determining the scope and contents of the prior art;
- (B) Ascertaining the differences between the prior art and the claims in issue;
- (C) Resolving the level of ordinary skill in the pertinent art; and

(D) Evaluating evidence of secondary considerations.

Applicants respectfully submit that a *prima facie* case of obviousness is not established using the art of record.

1. Claims 4 and 29 - 35 U.S.C. 103(a) - *Bruck* in view of *Krane*

The addition of *Krane* does not cure the deficiencies of *Bruck* discussed above in connection with independent claims 1 and 26. For at least the reason that independent claims 1 and 26 are allowable over *Bruck* in view of *Krane*, Applicants respectfully submit that claims 4 and 29 are allowable as a matter of law. Therefore, Applicants respectfully request that the rejection of claims 4 and 29 be withdrawn.

In addition, the combination of *Bruck* and *Krane* is not obvious. For instance, the techniques of *Bruck* may be construed as making it possible for users with visual impairments to be accommodated, thus rendering the system of *Krane* obsolete. Hence, it is not obvious to combine *Bruck* and *Krane*, and for at least this additional reason, Applicants respectfully request that the rejection be withdrawn.

2. Claims 13, 18, and 38 - 35 U.S.C. 103(a) - *Bruck* in view of *Elswick* and further in view of *May*

The addition of *Elswick* and *May* do not cure the deficiencies of *Bruck* discussed above in connection with independent claims 1 and 26. For at least the reason that independent claims 1 and 26 are allowable over *Bruck* in view of *Elswick* and *May*, Applicants respectfully submit that claims 13, 18, and 38 are allowable as a matter of law. Therefore, Applicants respectfully request that the rejection of claims 13, 18, and 38 be withdrawn.

3. Claim 57 - 35 U.S.C. 103(a) - *Bruck* in view of *Elswick*

The addition of *Elswick* does not cure the deficiencies of *Bruck* discussed above in connection with independent claim 55. For at least the reason that independent claim 55 is allowable over *Bruck* in view of *Elswick*, Applicants respectfully submit that claim 57 is allowable as a matter of law. Therefore, Applicants respectfully request that the rejection of claim 57 be withdrawn.

4. Claim 25 - 35 U.S.C. 103(a) *ATI* in view of *Rzeszewski*

Claims 25

Claim 25 recites (with emphasis added):

25. A method for determining the characteristics of a display device coupled to a network client device, said method comprising the steps of:
cycling through a plurality of video formats, each part of the cycle including a predetermined time duration;
outputting a video signal including pictures for each part of the cycle, wherein the pictures include at least one of graphics data and video data;
processing the pictures for each video format for output to a display device;
setting parameters of a video output port according to each video format;
soliciting a user response for each video format, wherein the step of soliciting includes the step of presenting at least one of visible instructions and audible instructions to the user;
determining at least one characteristic of the display device based on the user response, wherein the characteristic includes at least one of type of device, picture size, frame rate, scan format, color format, colorimetry, picture width-to-height aspect ratio, width-to-height aspect ratio of pixels, capability of providing ancillary data, manner of providing the ancillary data; and
driving the display device according to at least one parameter of a received TV signal processed by the network client device according to the determined characteristic to present images on a display screen.

Applicants respectfully submit that independent claim 25 is allowable over *ATI* in view of *Rzeszewski* for at least the reason that *ATI* in view of *Rzeszewski* fails to disclose, teach, or

suggest at least the above emphasized claim features. The Office Action (page 11) admits that *ATI* does not expressly disclose the above-emphasized features, but alleges that *Rzeszewski* does disclose these features. Applicants respectfully disagree. There is no indication in *Rzeszewski* that there is a cycling through **plural video formats**. Indeed, plural compensation circuit selections are scanned, according to the section cited by the Office Action, which is not the same as cycling through **plural video formats**. The non-final Office Action (page 16) attempts to rebut this argument and alleges the following (emphasis in original):

In combining of ATI in view of Rzeszewski, the Examiner takes support for video formats from ATI, whereas the Rzeszewski disclosure is used for the cycling portion.

Applicants respectfully note that page 15 of the non-final Office Action alleges otherwise. Assuming the intent reproduced above from page 16 of the non-final Office Action, Applicants respectfully submit that the substitution of circuits (to cycle through) and formats is not obvious. The circuits of *Rzeszewski* pertain to noise compensation, which is entirely different than what is disclosed in *ATI*. The systems standing alone do not act the same as they do singly, but rather, the circuits of *Rzeszewski* require fundamental changes to handle video/graphics display processing and change of formats. In other words, despite allegations to the contrary, it is not obvious to combine *ATI* and *Rzeszewski*, nor is there any predictability of success in combining the teachings of these two disparate systems. For at least this reason, Applicants respectfully request that the rejection be withdrawn. Accordingly, Applicants respectfully request that the rejection be withdrawn.

CONCLUSION

Applicants respectfully submit that Applicants' pending claims are in condition for allowance. Any other statements in the Office Action that are not explicitly addressed herein are not intended to be admitted. In addition, any and all findings of inherency are traversed as not having been shown to be necessarily present. Furthermore, any and all findings of well-known art and official notice, and similarly interpreted statements, should not be considered well known since the Office Action does not include specific factual findings predicated on sound technical and scientific reasoning to support such conclusions. Favorable reconsideration and allowance of the present application and all pending claims are hereby courteously requested. If, in the opinion of the Examiner, a telephonic conference would expedite the examination of this matter, the Examiner is invited to call the undersigned attorney.

Respectfully submitted,

/David Rodack/

Date: September 4, 2009

David Rodack
Registration No. 47,034

Merchant & Gould P.C.
P.O. Box 2903
Minneapolis, MN 55402-0903
404.954.5100